

04-0771 J.J.M. v. Elegant Counters Issued: 4/28/05

The Uninsured Employers' Fund ("UEF") asks the Utah Labor Commission to review Administrative Law Judge George's dismissal of the Workers Compensation Fund ("WCF") as a respondent to J. J. M.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND DISCUSSION

On August 23, 2004, Mr. M. filed an application for hearing with the Commission's Adjudication Division to compel Elegant Counters to pay workers' compensation benefits for a work injury Mr. M. suffered on August 26, 2003. On August 25, 2004, the Adjudication Division sent notice of Mr. M.'s claim to Elegant Counters and that company's putative insurance carrier, WCF.

WCF responded to the foregoing notice with a letter dated September 2, 2004, in which it stated that it had not been Elegant Counters' insurance carrier on the date of Mr. M.'s accident. On October 8, 2004, UEF's attorney informed Judge George "it appears the employer was not insured. Therefore, UEF should be brought in Please prepare the order and I will begin the process of UEF's response." On October 8, 2004, Judge George issued his order dismissing WCF and adding UEF as respondents.

On November 1, 2004, UEF submitted a motion for review of Judge George's October 8 order. In this motion for review, UEF argues that Judge George's order dismissing WCF should be reversed, thereby reinstating WCF and removing UEF as respondents. In other words, UEF asks the Commission to reverse Judge George for doing what UEF agreed he should do.

In order to maintain an orderly and efficient adjudication process, the Commission generally holds litigants to the terms of their admissions, stipulations and agreements. While the Commission does not rule out the possibility that, in some cases, concerns regarding manifest injustice or necessity might warrant relieving a party from such admissions, stipulations or agreements, no such factors have been presented in this case. The Commission therefore concludes that UEF, having agreed that Judge George should dismiss WCF from this case, cannot now insist that WCF be brought back into the case.

ORDER

The Commission affirms Judge George's order dismissing WCF and adding UEF as respondents in this proceeding. The Commission remands this matter to Judge George for further proceedings necessary to determine Mr. M.'s claim for benefits.

Dated this 28th day of April, 2005.

R. Lee Ellertson, Commissioner